



January 31, 2003

Denise L. Desautels, Presiding Officer
Energy Facilities Siting Board
One South Station
Boston, Massachusetts 02110

Re: EFSB 02-RM-2
Promulgation of Rules Governing Siting of Natural Gas
Pipelines and Participation in Federal Siting Proceedings,
and Repeal of Certain Existing Siting Board Rules

Dear Ms. Desautels:

On December 20, 2002, the Massachusetts Energy Facilities Siting Board ("Siting Board") issued its Final Order Opening Rulemaking ("Rulemaking") in the above-referenced proceeding. The Rulemaking established a written comment period, ending January 31, 2003, for the purpose of, among other things, gathering comments on the Siting Board's proposed regulations. Tennessee Gas Pipeline Company ("Tennessee") hereby specially appears¹ and submits these comments on the referenced Rulemaking and proposed regulations contained therein.

The Siting Board is proposing "to promulgate two new regulations governing the construction of natural gas pipelines in Massachusetts." These proposed regulations purport to assert jurisdiction over interstate pipeline companies and their construction of interstate pipeline facilities by requiring them to submit certain filings and notices, to be responsible for various costs and fees, and to comply with other requirements. For example, proposed 980 CMR § 15.00 sets forth state procedures that an interstate pipeline company would be expected to follow to construct its facilities, including submission of an in-depth description of the project and a filing fee as high as \$75,000. Proposed 980 CMR § 17.00 sets forth other state procedures that an interstate pipeline company would be expected to follow to construct its facilities, including notifying the Siting Board of proposed projects filed with the Federal Energy Regulatory Commission ("FERC"). In order to put these regulations into effect as currently proposed, Tennessee submits that the Siting Board must first address the statutory underpinnings of the

¹ Tennessee is making this special appearance solely to inform the Siting Board of Tennessee's legal position regarding the Siting Board's proposed actions. Tennessee has never assented to the Siting Board's jurisdiction and is not doing so now. Tennessee specifically reserves any and all rights to challenge the Siting Board's proposals and attempts to exert jurisdiction over Tennessee.

regulations (i.e., whether these proposed regulations are pre-empted by federal law and the regulations of the FERC).

Tennessee is an interstate pipeline company that transports natural gas in interstate commerce and is subject to the jurisdiction of the FERC. Pursuant to the Natural Gas Act, 15 U.S.C. § 717 et seq. ("NGA"), FERC has exclusive jurisdiction, inter alia, over the transportation of natural gas in interstate commerce, over natural gas pipeline companies engaged in such transportation, and over the construction or extension of any natural gas pipeline facility used for such transportation. Accordingly, it is Tennessee's belief that the Siting Board cannot, through the proposed regulations, assert jurisdiction over interstate pipeline companies and the construction of their facilities because such actions are inconsistent with, and contrary to, the authority granted to the FERC under the NGA.

As a general practice, Tennessee firmly supports the role of an interstate pipeline as a good corporate citizen wherever its facilities are located. As part of these efforts, Tennessee has voluntarily cooperated with the previous informal Siting Board requests, including providing the Siting Board certain information relating to Tennessee's construction projects in Massachusetts. Tennessee would like to continue its positive and productive working relationship with the Siting Board in that manner. Tennessee is unable to agree, however, to any proposed regulation that conflicts with the statutory mandate of the FERC and the NGA.

Tennessee is also submitting this letter in electronic format on a floppy diskette. If you have any questions regarding Tennessee's position, please contact the undersigned at (832) 676-5509.

Very truly yours,

TENNESSEE GAS PIPELINE COMPANY

/s/ Jacques A. Hodges
Jacques A. Hodges
Its Attorney